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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 GYLES R. LONG,) CASE NO. C11-0230-TSZ
09 Plaintiff,)
10 v.) ORDER
11 KING COUNTY, et al.,)
12 Defendants.)
_____)

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14 This matter comes before the Court on Defendants' Motion for Summary
15 Judgment and Dismissal, docket no. 13, and Defendants' Motion for Relief from
16 Remaining Deadlines in Minute Orders and Continuance of Trial Date Pending
17 Decision on Summary Judgment Motion, docket no. 24. For the reasons discussed
18 below, the Court GRANTS Defendants' Motion for Summary Judgment and Dismissal
19 and DISMISSES Plaintiff's Complaint. Defendants' Motion for Relief from
20 Remaining Deadlines is STRICKEN as MOOT.

21 **I. Background**

22 Pro se Plaintiff Gyles Long alleges that on May 31, 2007, he was "viciously
attacked and battered by King County Metro bus driver for no apparent reason as he

01 entered the bus as a paying customer.” Complaint at ¶ 1 (docket no. 1-1). On July 6,
02 2007, Mr. Long filed a claim for damages in King County. Ex. 1 to Decl. of Christine
03 Oh in Supp. of Defendants’ Mot. for Summ. J. (“Oh Decl.”) (docket no. 16). Christine
04 Oh, who was at the time a senior tort claims investigator in the King County Office of
05 Risk Management, investigated Mr. Long’s claim. Oh Decl. ¶¶ 2-3. Failing to find
06 any written reports by bus drivers or police officers corroborating Mr. Long’s story, and
07 in the absence of any written documentation submitted by Mr. Long to support his
08 claim, Ms. Oh recommended that Mr. Long’s claim be denied. Id. at ¶¶ 5-6. Karen
09 Graham, transit claims manager of King County’s Office of Risk Management,
10 reviewed and approved the claim denial. Decl. of Karen Graham in Supp. of
11 Defendants’ Mot. for Summ. J. (“Graham Decl.”) ¶¶ 2-3 (docket no. 15).

13 On May 29, 2009, Mr. Long filed a complaint in King County Superior Court.
14 Long v. King County, King County Superior Court, No. 09-2-20962-6 KNT. Mr.
15 Long’s case was dismissed on summary judgment and is currently on appeal. See State
16 Court of Appeals, Div. I, No. 66741-6-I.

17 On February 9, 2011, Mr. Long brought suit in this Court under the Civil Rights
18 Act, 42 U.S.C. § 1983, and several state law causes of action, alleging generally that
19 Defendants Ms. Graham, Ms. Oh, and King County violated his constitutional rights,
20 and that Ms. Oh and Ms. Graham treated him differently because of his race in the
21 process of handling his claim investigation. Defendants now move the Court to
22 dismiss Mr. Long’s Complaint on summary judgment. Mr. Long moved for an

01 extension of time to file a response to Defendants' motion until December 19, 2011,
02 which the Court granted, but he did not file a response within the time period granted by
03 the Court. See docket nos. 17, 18. He did, however, file a response on January 13,
04 2012, which he has subsequently amended twice. Plaintiff's Mem. in Opp'n to Def.'s
05 Mot. for Summ. J. (docket no. 22, amended by docket nos. 23 and 25).

06 **II. Standard of Review**

07 The Court shall grant summary judgment if no genuine dispute of material fact
08 exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
09 56(a). The moving party bears the initial burden of demonstrating the absence of a
10 genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A
11 fact is material if it might affect the outcome of the suit under the governing law.
12 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In support of its motion for
13 summary judgment, the moving party need not negate the opponent's claim, Celotex,
14 477 U.S. at 323; rather, the moving party will be entitled to judgment if the evidence is
15 not sufficient for a jury to return a verdict in favor of the opponent, Anderson, 477 U.S.
16 at 249. To survive a motion for summary judgment, the adverse party must present
17 affirmative evidence, which "is to be believed" and from which all "justifiable
18 inferences" are to be favorably drawn. Id. at 255, 257. When the record taken as a
19 whole, could not lead a rational trier of fact to find for the non-moving party, summary
20 judgment is warranted. See, e.g., Beard v. Banks, 548 U.S. 521, 529 (2006).
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01 **III. Discussion**

02 Defendants argue that (1) Mr. Long's § 1983 claims should be dismissed for
03 failure to submit any proof of racial motivation; (2) Mr. Long's § 1983 claim against
04 King County should be dismissed pursuant to Monell v. Dep't of Social Services, 436
05 U.S. 658 (1978); (3) Mr. Long's § 1983 claims against Ms. Oh and Ms. Graham should
06 be dismissed based on qualified immunity; (4) Mr. Long's state law claims fail for lack
07 of claim filing and on their merits; and (5) Mr. Long's claims against Ms. Oh and Ms.
08 Graham should be dismissed for failing to properly serve them.

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10 **A. Mr. Long's § 1983 Claim Is Dismissed for Lack of Proof of Racial**
11 **Motivation.**

12 Defendants argue that Mr. Long has failed to submit any proof of racial
13 motivation, and that therefore his claims under 42 U.S.C. § 1983 should be dismissed.

14 "To make out a prima facie case under § 1983, plaintiff[] must show that the
15 defendants (1) acted under color of state law, and (2) deprived the plaintiff[] of rights
16 secured by the constitution." Borunda v. Richmond, 885 F.2d 1384, 1391 (1989). Mr.
17 Long alleges that he was treated differently because of his race during the claims
18 handling process. In general, he alleges that his claim was never properly investigated,
19 and the lack of proper investigation was racially motivated. See, e.g., Compl. at
20 ¶¶ 32-36, 38, 45-47. Mr. Long does not point to specific facts or instances, however,
21 indicative of racial bias.¹ In connection with Defendants' motion for summary
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¹ The only specific incident Mr. Long describes which he alleges demonstrates racial bias is a

01 judgment, Ms. Oh and Ms. Graham have submitted declarations stating that Mr. Long's
02 claim was investigated fairly and in compliance with King County's claims manual, and
03 that at no time was Mr. Long treated differently because of his race. See Graham Decl.
04 at ¶ 4; Oh Decl. at ¶¶ 5, 8, 10.

05 Once a moving party has demonstrated an absence of a genuine issue of material
06 fact, the nonmoving party must then demonstrate that summary judgment is not
07 appropriate. "The party opposing the motion for summary judgment 'may not rest
08 upon the mere allegations or denials of [her] pleading, but...must set forth specific facts
09 showing that there is a genuine issue for trial.'" Mattos v. Agarano, 590 F.3d 1082,
10 1085 (9th Cir. 2010) (quoting Anderson at 248). Defendants have demonstrated
11 through the declarations of his claim handlers that Mr. Long was not treated differently
12 because of his race. In his tardy response, Mr. Long admits that he is "unable to
13 address the questions of equal protection under the law, race discrimination and
14 conspiracy."² Plaintiff's Mem. in Opp'n to Def.'s Mot. for Summ. J. at 12.

16 Accordingly, the Court grants summary judgment on Mr. Long's 1983 claim for lack of
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19 statement made by Ms. Oh during a phone conversation with Mr. Long where she told him "you
20 people must think you're the only case I've got." Compl. at ¶ 33. This statement on its face,
however, is not indicative of racial bias.

21 ² Mr. Long asserts that he is unable to show racial discrimination because "[s]ince King County
22 and ORM has denied Plaintiff access to all relevant records in their custody, he is unable to
obtain the records needed for any type of comparative analysis...." Plaintiff's Mem. in Opp'n
to Def.'s Mot. for Summ. J. at 12. However, Mr. Long has failed to identify a record
allegedly in Defendants' possession that would demonstrate racial bias in the handling of his
claim.

evidence of racial bias.³

B. In the Alternative, Mr. Long’s § 1983 Claim against King County Is Dismissed under Monell, and his § 1983 Claim against the Individual Defendants Is Dismissed Based on Qualified Immunity.

1. § 1983 Claim against King County

Defendants argue that Mr. Long’s § 1983 claim against King County must be dismissed because he has failed to allege, let alone present any evidence, that some specific official policy, practice, or custom of the County has caused the deprivation of Mr. Long’s constitutional right.

A municipality is liable under § 1983 if the alleged wrongful conduct was pursuant to official policy or custom. Monell v. Dep’t of Soc. Services, 436 U.S. 658, 691 (1978). To prevail on a § 1983 claim against a municipality, the plaintiff must show that (1) there was a deprivation of a constitutional right; (2) that the municipality has a policy; (3) that the policy is deliberately indifferent to a constitutional right; and (4) the policy is the reason for the constitutional violation. Mabe v. San Bernardino County, 237 F.3d 1101, 1110-11 (9th Cir. 2001). “[A] municipality cannot be held liable *solely* because it employs a tortfeasor – or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” Monell, 436 U.S. at 691

³ Mr. Long also asserts his due process rights were violated because Ms. Oh did not promptly respond to his claim, and because “there was never a legitimate investigation undertaken.” See Complaint at ¶¶ 4, 6, 8-11, 13-25. However, Plaintiff’s allegation that his claim was processed negligently or too slowly constitutes, at most, a negligence claim not cognizable under § 1983. See Daniels v. Williams, 474 U.S. 327 (1986).

01 (emphasis in original). Because Mr. Long has failed to allege or present evidence that
02 some official policy of King County led to the deprivation of his rights, the Court grants
03 summary judgment in favor of Defendants on this issue.⁴

04 **2. § 1983 Claim against the Individual Defendants**

05 The individual defendants argue that they are entitled to qualified immunity
06 because Mr. Long has failed to demonstrate that his constitutional rights were violated.

07 “[G]overnment officials performing discretionary functions generally are
08 shielded from liability for civil damages insofar as their conduct does not violate clearly
09 established statutory or constitutional rights of which a reasonable person would have
10 known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). When government officials
11 abuse their office, actions for damages may offer the only realistic avenue for
12 vindication of constitutional guarantees. Permitting damages suits against government
13 officials, however, can entail social costs, including the risk that fear of personal
14 monetary liability and harassing litigation will unduly inhibit officials in the discharge
15 of their duties. Anderson v. Creighton, 483 U.S. 635 (1987). The purpose of qualified
16 immunity is to accommodate these conflicting concerns by shielding government
17 officials performing discretionary functions from civil damages “as long as their actions
18 could reasonably have been thought consistent with the rights they are alleged to have
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21 ⁴ In his response, Mr. Long for the first time alleges “that King County lacks policy [sic]
22 requiring competent investigations from its investigation agency Office of Risk Management.”
Plaintiff’s Mem. in Opp’n to Def.’s Mot. for Summ. J. at 7. However, Mr. Long does not
provide any evidence of an affirmative policy “deliberately indifferent” to Mr. Long’s
constitutional rights.

01 violated.” Id. The Harlow standard “gives ample room for mistaken judgments,”
02 Malley v. Briggs, 475 U.S. 335, 343 (1986), and “provides ample protection to all but
03 the plainly incompetent or those who knowingly violate the law.” Id. at 341.

04 Analysis of a qualified immunity claim involves three steps: (1) identifying the
05 specific right allegedly violated; (2) determining whether the right was so clearly
06 established as to alert a reasonable officer to its constitutional parameters; and (3)
07 determining whether a reasonable public officer could have believed that the particular
08 conduct at issue was lawful. Gabbert v. Conn., 131 F.3d 793, 799 (9th Cir. 1997). The
09 plaintiff must identify the specific right allegedly violated, and bears the burden of
10 showing that the right allegedly violated was clearly established. If the plaintiff
11 demonstrates that the right allegedly violated was clearly established, the court must
12 then consider whether a reasonable official could have believed the conduct at issue was
13 lawful under that clearly established law. The defendant bears the burden of showing
14 that a reasonable official could have believed that the conduct was lawful. Id. at
15 800-02.

17 The threshold question in the qualified immunity analysis is whether the facts
18 “[t]aken in the light most favorable to the party asserting the injury...show that the
19 [defendants’] conduct violated a constitutional right.” Saucier v. Katz, 533 U.S. 194,
20 201 (2001). Defendants have submitted declarations demonstrating that Ms. Graham
21 and Ms. Oh did not violate Mr. Long’s constitutional rights. See Graham Decl. at ¶ 4;
22 Oh Decl. at ¶¶ 5, 8, 10. Mr. Long has presented no evidence demonstrating that they

01 violated his constitutional rights. Accordingly, in the alternative to dismissing Mr.
02 Long's § 1983 claim against the individual defendants on the basis that he lacks proof of
03 racially-motivated discrimination, the Court dismisses his claim against the individual
04 defendants on the basis of qualified immunity.

05 **C. Mr. Long's State Tort Claims Are Dismissed For Lack of Evidence**
06 **and For Failure to Comply With RCW 4.92.100 and RCW 4.92.110.**

07 Mr. Long asserts several state law tort claims related to his claims handling,
08 including Breach of Duty to Act Based on Special Relationship (Third Cause of Action),
09 Civil Conspiracy (Fifth Cause of Action), Willful and Wonton Misconduct (Sixth Cause
10 of Action), and Racial Discrimination (Seventh Cause of Action). Defendants argue
11 that to the extent the Court does not deny these claims for lack of evidence, it should
12 deny them for failure to comply with RCW 4.92.100 and RCW 4.92.110, which require
13 presentment of claims arising from tortious conduct.

15 For the same reason his § 1983 claims fail for lack of evidence, his tort claims, all
16 of which are premised on discriminatory claims handling, are also dismissed for lack of
17 evidence. In the alternative, these claims are dismissed because Mr. Long failed to first
18 file his claims with King County prior to commencing suit.⁵ See RCW 4.92.100 and
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20 ⁵ In his response, Mr. Long argues that Felder v. Casey, 487 U.S. 131 (1988), stands for the
21 proposition that the RCW 4.92.100 and RCW 4.92.110 are preempted in this case. Mr. Long is
22 mistaken. Felder stands for the proposition that notice of claim provisions in state statutes are
inapplicable to civil rights actions brought under 42 U.S.C. § 1983. See also Joshua v. Newell,
871 F.2d 884, 886 (9th Cir. 1989) (holding under Felder that the Washington notice of claims
statute does not apply to § 1983 claims brought in federal court). Here, in contrast, Defendants
argue that RCW 4.92.100 and RCW 4.92.110 bar only Mr. Long's state-law tort claims, not his

01 RCW 4.92.110 (requiring tort claims against state officers to first be presented to the
02 risk management division); Decl. of Linda M. Gallagher in Supp. of Defendants' Mot.
03 for Summ. J. ¶ 6 (docket no. 14) (indicating that a review of the King County Risk
04 Management Database contained no record of Mr. Long having filed a tort claim).⁶

05 **VI. Conclusion**

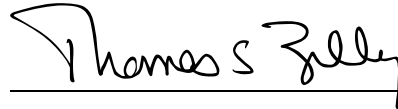
06 The Court hereby GRANTS Defendants' Motion for Summary Judgment and
07 Dismissal, docket no. 13, and DISMISSES Mr. Long's Complaint. The Court
08 STRIKES AS MOOT Defendants' Motion for Relief from Remaining Deadlines in
09 Minute Orders and Continuance of Trial Date Pending Decision on Summary Judgment
10 Motion, docket no. 24.
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14 claims under section § 1983.

15 ⁶ Defendants also argue for the dismissal of Mr. Long's Complaint against Ms. Oh and Ms.
16 Graham on the basis that neither was personally served as required by Fed. R. Civ. P. 4. See
17 Oh Decl. ¶ 9; Graham Decl. ¶ 5.

18 In order to properly serve an individual under Rule 4, Mr. Long could have either
19 delivered a copy of the summons and the complaint to Ms. Oh and Ms. Graham personally, or
20 he could deliver a copy to an agent authorized by appointment or by law to receive service of
21 process. See Fed. R. Civ. P. 4(e)(2). It appears Mr. Long attempted to serve Ms. Oh and Ms.
22 Graham by serving the Clerk of the Council for King County. See Decl. of Service of Federal
Summons and Compl. (docket no. 12). Both Ms. Oh and Ms. Graham have asserted that they
did not receive personal delivery, but they have not alleged that the Clerk of the Council for
King County was not authorized to accept service on their behalf, nor have they shown that they
have been prejudiced by the defect. See Campagnolo S.R.L. v. Full Speed Ahead, Inc., No.
08-1372, 2009 WL 1788381 (W.D. Wash., June 22, 2009) ("Rule 4 is a flexible rule that should
be liberally construed so long as a party receives sufficient notice of the complaint.") (citing
United Food & Commercial Workers Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir.
1984)). Accordingly, and because substantive grounds exist for dismissing Mr. Long's
Complaint, the Court denies Defendants' motion to dismiss his Complaint against the
individual defendants on the basis that neither were personally served as required by Fed. R.
Civ. P. 4.

01 DATED this 6th day of February, 2012.

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04 Thomas S. Zilly
05 United States District Judge
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